THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.1233 of 2001

Dated: 06th February, 2006

Between:

No.6909967L Havaldar P.Balakrishnan,
Aged 47 years, Occ: Army Service,
R/o AOC Centre, Secunderabad (AP).

…..PETITIONER

AND

The Union of India TH: The Secretary
Ministry of Defence, Government of India,
New Delhi- 110 011 & 2 others.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE
N.V.RAMANA

W.P. No. 1233 of 2001

ORDER:

The petitioner joined the service of the Army Ordnance Corps in the Indian Army as Sepoy on 12.08.1976, and he was promoted to the next higher post of Havaldar on 01.02.1985. The next higher post for promotion from the post of Havaldar is Naib Subedar, and to be eligible for promotion to the said post, one should not have crossed the age of 44 years and should have earned five Annual Confidential Reports. The petitioner states that he having earned five Annual Confidential Reports by 1990, and he having not crossed the age of 44 years, became eligible for promotion to the post of Naib Subedar.

He states that as per the promotion policy, he is entitled to three chances, and though the respondents constituted Departmental Promotion Committee for the years 1991, 1992, 1993, 1994 and 1995, they did not recommend his name for promotion to the post of Naib Subedar. The petitioner states that he successfully completed Havaldar to Naib Subedar Cadre Course in 1995, and by the time, the respondents recommended his name for promotion to the Departmental Promotion Committee constituted in 1996, he became over-aged as he crossed the age of 44 years. The petitioner states that as per the service conditions, Havaldar is to be continued in service until he attains the age of 47 years, and as per the said age, he would be superannuated on 31.12.1998.

While so, the petitioner states that the Army Head Quarters, issued revised criteria for promotion, vide their Letter No.B/33513/AG/PS[20(C)], dated 10.10.1997, and vide their letter No.B/33127/AG/PS[20(C)], dated 14.10.1998, they enhanced the age

for promotion and retirement by two years. By reason of these two letters, the petitioner states that the age for promotion stood increased from 44 to 46 years and age of retirement stood increased from 47 to 49 years. In view of the enhancement of the age for promotion and retirement by two years, the petitioner states that he is eligible for promotion as on 01.01.1998, but the respondents have not recommended his name for promotion to the Departmental Promotion Committee constituted for years 1998, 1999 and 2000. He, therefore, filed this writ petition.

The learned counsel for the petitioner submits that the petitioner was promoted to the post of Havaldar in 1985, and he having earned five Annual Confidential Reports by 1990, having not crossed the age of 44 years, and having successfully completed the Havaldar to Naib Subedar Cadre Course in 1995, became eligible for promotion to the post of Naib Subedar, but the respondents have not recommended his name to the Departmental Promotion Committee, constituted for the years 1991, 1992, 1993, 1994 and 1995. He submits that though respondents recommended his name to the Departmental Promotion Committee, constituted in 1996, his case for promotion was rejected on the ground that he crossed the age of 44 years. The learned counsel submits that the petitioner is entitled to three chances, and having regard to the fact that the Army Head Quarters, vide their letters dated 10.10.1997 and 14.10.1998, had revised the criteria for promotion and enhanced the age of promotion and retirement by two years, and he having not retired from service, is entitled for two more chances, but the action of the respondents in not recommending his name for promotion to the Departmental Promotion Committee, constituted for the years 1998, 1999 and 2000, while recommending the names of his juniors, is illegal and arbitrary.

The respondents filed counter. The learned Assistant Solicitor General reiterating the counter averments submitted that the petitioner became eligible for promotion after he successfully completed Havaldar to Naib Subedar Cadre Course held during September 1995 to November, 1995, and immediately thereafter, his name was recommended to the Departmental Promotion Committee, constituted in 1996, but on the ground that he crossed the age of 44 years as on 01.01.1996, his case for promotion was rejected. He submitted that

the petitioner being a Subedar, the age of retirement is 47 years, and he was to retire on 31.12.1998, but before he could retire, the Army Head Quarters, issued letters dated 10.10.1997 and 14.10.1998, revising the criteria for promotion and enhancing the age for promotion and retirement by two years, and by reason of the said letters, the age for promotion and retirement has been increased from 44 years to 46 years and from 47 years to 49 years, and as such, the petitioner was continued upto the age of 49 years, and was retired from service on 31.12.2000. He submitted that there is no provision in the policy, which provides for giving three chances for promotion to an over-aged person, and having regard to the enhancement in the age for promotion and retirement, if two chances are provided, yet the petitioner would be over-aged for the reason that by time, the Army Head Quarters, issued the said letters, the petitioner had already crossed the age of 46 years. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Assistant Solicitor General for the respondents.

The contention of the petitioner that he having acquired five Annual Confidential Reports in the post of Havaldar, became eligible for promotion to the post of Naib Subedar in 1990 cannot be accepted, for the reason that though he acquired five Annual Confidential Reports by 1990, he had completed the Havaldar to Naib Subedar Cadre Course only on November, 1995, and immediately thereafter, the respondents have recommended his case for promotion to the Departmental Promotion Committee, constituted in 1996, but as the petitioner as on 01.01.1996 crossed the maximum age of 44 years, prescribed for promotion to the post of Naib Subedar, his case for promotion was rejected by the Departmental Promotion Committee, and no exception can be taken thereto.

Though the petitioner contends that he is entitled to three chances for promotion, and his case having been rejected, he is entitled to two more chances, the fact remains, it is the case of the respondents that there is no provision in the promotion policy, which requires giving three chances to a person, who is already over-aged and not entitled for promotion. Be that as it may, the Departmental Promotion Committee, constituted in 1996, which considered the case

of the petitioner, rejected his case for promotion on the ground that he has crossed the age of 44 years as on 01.01.1996, and since the petitioner was over-aged for promotion, the question of recommending his case for promotion once again, does not arise, for even if his case was to be recommended, the end result would be that his case would have been rejected on the ground that he is over-aged. In that view of the matter, no exception can be taken to the action of the respondents in not recommending the case of the petitioner for promotion to the Departmental Promotion Committee.

It is the contention of the petitioner that having regard to the letters of the Army Head Quarters issued in letter
No. B/33513/AG/PS[20(C)] dated 10.10.1997 and letter
No. B/33127/AG/PS [20(C)], dated 14.10.1998, which revised the criteria for promotion and enhanced the age for promotion and retirement by two years, ought to have given him two more chances by recommending his case for promotion to the Departmental Promotion Committee. I am unable to accept this contention of the petitioner for the reason that the revised criteria, issued by the Army Head Quarters in letter dated 10.10.1997, having regard to Clause 18 thereof, came into force from 01.01.1998 making it clear that no past cases will be re-opened, and since the case of the petitioner was already rejected, having regard to clause 18 of the letter dated 10.10.1997, the question of his case being re-opened for promotion, does not arise. The letter dated 14.10.1998 of the Army Head Quarter, which enhanced the age for promotion and retirement by two years, having regard to clause 6 thereof, came into force from the date it was issued, namely 14.10.1998, and since the petitioner did not retire as on the date of its issuance, he was given the benefit of two years. The petitioner, who was supposed to retire on attaining the age of 47 years on 31.12.1998, by reason of the benefit of extension in the age of retirement by two years, was continued up to the age of 49 years and was retired from service on 31.12.2000. Since the petitioner by the date of issuance of letter of the letters by the Army Head Quarters, had already crossed the enhanced age of 46 years, prescribed for promotion, no exception can be taken to the action of the respondents in not recommending the case of the petitioner to the Departmental Promotion Committee, for promotion to the post of Naib Subedar, in terms of the letters issued by the Army Head Quarters.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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(N.V. RAMANA, J.)

Date: 6th February 2006.

GRK